

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

WP(C).No. 26307 of 2004(F)

PETITIONER:

ANISH V.KUMAR,
K.R.DARDONS, KATTUPUTHUSSERI, NAVAIKULAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.L.MURALEEDHARAN

RESPONDENTS:

1. THE REGIONAL TRANSPORT AUTHORITY,
KOLLAM, REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY, KOLLAM.
3. THE DISTRICT TRANSPORT OFFICER, K.S.R.T.C., KOLLAM.
4. C.VIJAYAKUMAR,
VIDHYA BHAVAN, KADAKKAL P.O., KOLLAM.
5. T.S.SUDHEESH KUMAR,
CHARUVILA VEEDU, KOONAYIL, NEDUNGALAM P.O.,KOLLAM.
6. THE STATE TRANSPORT APPELLATE TRIBUNAL, ERNAKULAM.

BY ADV. SRI.T.RAVIKUMAR, SC, KSRTC
SRI.JAMES KOSHY.N., SC. KSRTC
GOVERNMENT PLEADER SRI. M.K. SABU
SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 4/12/2006,
ALONG WITH WPC NO. 37328 OF 2004 WA NO. 1210 OF 2006 THE COURT
ON 19/12/2006, DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS: W.P.C.NO. 26307/2004

EXT.P1 TRUE COPY OF PROCEEDINGS OF R1 HELD ON 25-1-2003.

EXT.P2 APPEAL PETITION FILED ON 4-3-2003.

EXT.P3 COPY OF TEMPORARY PERMIT.

EXT.P4 DO. DO.

EXT.P5 JUDGMENT DT. 31-7-2004 IN MVAA 264/2003.

EXT.P6 ROUGH SKETCH OF THE ROUTE KADAKKAL-PARIPPALLY.

EXT.P7 THIRUVANANTHAPURAM CIRCULAR SCHEME.

RESPONDENTS' EXHIBITS:

EXT.R3(a) PHOTOCOPY OF NOTIFICATION DT. 23-11-1960.

[TRUE COPY]

P.S TO JUDGE.

V.K. Bali, C.J. & S. Siri Jagan, J.
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W.P(C) Nos. 26307 & 37328 of 2004
&
W.A.No. 1210 of 2006
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Dated this, the December, 2006.

J U D G M E N T

Siri Jagan, J.

These three cases raise a very peculiar issue viz. whether a permit can be issued connecting two intersecting points in a nationalised route in violation of the scheme notified by the Government although such prohibition of grant of permits would not in any way benefit either the KSRTC or the travelling public in any manner. In all these three cases, the nationalised route is the same but the intersecting points between which grant of permits are applied for are different. Therefore, for the purpose of deciding these cases, it is sufficient to refer only to the facts in one case, which we choose as W.P(C) No. 26307/2004. The facts are as follows.

2. The petitioner applied for a regular permit on the inter-district route Kadakkal-Parippally, (via) Nilamel-Pallickal. The R.T.A, Kollam considered the application and rejected it by Ext. P1 decision dated 25-1-2003. Appeal filed by the petitioner against that order was dismissed by Ext. P5 judgment dated 31-7-2004 of the State Transport Appellate Tribunal. The writ petition is filed challenging Exts. P1 and P5. The reason for rejection of the application for permit was that it connects two intermediate points at Parippally and Nilamel on the Thiruvananthapuram-Kollam-Kottarakkara-Thiruvananthapuram circular route, which is covered by the nationalisation scheme, which is Ext. P7. All the routes indicated in Annexure A of Ext. P7 and connecting or passing through any two or more intermediate points of such route are covered by the said scheme. It is also not disputed that Parippally and Nilamel are

intermediate points on such circular route and therefore it would connect two intermediate points on the notified routes. The scheme concerned is a complete exclusion scheme with exception. The contention of the petitioner is that Parippally is a terminus and his route cuts across the nationalised routes at Nilamel. Therefore, limited overlapping without passing through or connecting two intermediate points is tolerated since an intersection even in complete exclusion scheme is permissible. So, touching at Nilamel may be treated as intersection and if that be so, permit can be granted. In support of that submission, the petitioner also places reliance on a judgment of this Court in W.P(C) No. 30812/2004.

3. The present nationalised route has a peculiarity unlike other routes which is that it is a circular route. It starts from Thiruvananthapuram, passes through Attingal and Parippally, goes to Kollam, from there goes to Kottarakkara and then passes through Nilamel and back to Thiruvananthapuram. This is a very long circuitous route covering a lot of distance by the very nature of the route, whereas the distance between Parippally and Nilamel between which the permit is applied for by the petitioner is comparatively of much smaller distance. No sensible person who wants to go to Nilamel from Parippally or vice versa would ever board a KSRTC bus from Parippally to go to Nilamel via Kollam and Kottarakkara and vice-versa by wasting time and money, which time and money would be rather very considerable going by the distance one would have to travel along the nationalised route to reach the respective destinations.

4. In the reference order in W.P(C) Nos. 26307/2004 and 37328/2004, the learned Single Judge opined that the framers of the scheme imposed restrictions in the matter of granting of permits

between the intermediate points in a nationalised route keeping in mind the linear routes instead of circular routes as in this case. The intention behind such prohibition was to discourage private operators operating on the same line of travel as that of KSRTC buses causing dent into the income of the KSRTC. The learned Single Judge noted that out of 22 routes covered by Ext. P7 scheme, 20 are linear routes and only two are circular routes, that too somewhat in opposite directions of the same route. The learned Single Judge further opined that if the intention of the scheme is kept in mind, passing through two intermediate points or connecting two intermediate points prohibited under the scheme should generally be in the same or opposite direction of travel. If such conditions are mechanically applied to the circular route also, very serious prejudice would be caused to the applicants for permits without any corresponding benefit to the KSRTC and in such cases, Ext. P7 being a piece of subordinate legislation, an interpretation which is violative of the fundamental rights of the petitioner under Articles 14 and 19(1)(g) of the Constitution of India should be avoided. The learned Single Judge (K. Balakrishnan Nair, J) also extracted a passage from the Laws of England by Sir Blackston in support of his views thus:

“For since in laws all cases cannot be foreseen or expressed, it is necessary, that when the general decrees of the law come to be applied to particular cases, there should be somewhere a power vested of defining those circumstances, which (had then been foreseen) the legislator himself would have excepted.”

He also quoted the words of Lord Denning M.R in the case of **Seaford Court Estates Ltd v. Aher** (1949) 2 All ER 155(CA), which reads thus:

“When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, . . . and then he must supplement the written word so as to

give 'force and life' to the intention of the legislature . . . A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

The learned Single Judge was of opinion that in such circumstances the interpretation should be adopted, which would avoid the mischief caused by, and promote the intention of Ext. P7, legislation. Viewed thus, according to the learned Single Judge, the restriction which is normally applied in the case of linear nationalised routes should not be applied to circular routes failing which not only would the KSRTC be not benefitted but also the travelling public for whose benefit the scheme and permits are provided would be put to untold sufferings. However, because of the judgment of the the learned Single Judge, which is impugned in W.A.No.1210/2006, in which another learned Single Judge took the strict view that since the permits applied for is in respect of a route connecting two intermediate points of a nationalised route such grant of permits would violate Ext. P7 scheme and is therefore prohibitory, the other learned Single Judge, chose to refer the matter to a Division Bench for consideration and it is thus these writ petitions came up before us along with the writ appeal.

5. We have heard counsel appearing for the parties. The respondents argued in support of the impugned orders.

6. In the facts and circumstances of the case, we are in full agreement with the views expressed by the learned Single Judge in his reference order in W.P(C) Nos. 26307 and 37328 of 2004. Even if the impugned orders may be regarded as technically correct, we think that the law in this case should not be applied mechanically without taking into account the impact of imposing such restrictions on a circular route on the travelling public. We are also of opinion that no

persons in their sensible mind would want to travel between the two connecting points in the circular route of KSRTC bus traversing the entire circular route wasting their time and money. While imposing such restrictions on issue of permits between these two points, the public would be put to unnecessary hardships which could not have been the intention of the Government while issuing Ext. P7 notification. As such, we are of opinion that as held by Sir Blackston as also Lord Denning M.R. a situation has arisen wherein this Court should put an interpretation to Ext. P7 notification in respect of the circular routes which is in consonance with the object of Ext. P7 notification and the convenience of the travelling public. Nobody can dispute the fact that the very object of issue of permits is intended for the benefit of the travelling public. Of course, it is in order to safeguard the interest of the KSRTC that the schemes like Ext. P7 are being issued with restrictions on issue of permits in between two connecting points in the nationalised routes. If, for this purpose, linear routes and circular routes are considered at par not only would the KSRTC be not benefitted but also the travelling public would be seriously inconvenienced. We are, therefore, satisfied that an interpretation which would promote the object and prevent the mischief of the legislation should be adopted in this case. This can be done by holding that restriction on issuing of permits between two intermediate points in a nationalised route would be applicable only to linear routes and not to circular routes as in the cases under consideration.

7. Accordingly, the judgment of the learned Single Judge in W.P(C) No. 25825/2005 is set aside and the impugned orders in all the three writ petitions are quashed allowing W.P(C) Nos. 26307 & 37328 of 2004 and W.A.No. 1210 of 2006. The RTAs are directed to

reconsider the applications of the petitioners for permit submitted by them between the two intermediate points in the circular routes afresh in accordance with the observations and directions in this judgment.

The writ appeal and the writ petitions are disposed of accordingly.

V.K. Bali, Chief Justice.

S. Siri Jagan, Judge.

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